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EXAMINER

KOENIG, ANDREW Y

ART UNIT PAPER NUMBER

2611

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/756,911

**Applicant(s)**

ISHII, HIROSHI

**Examiner**

Andrew Y Koenig

**Art Unit**

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 13 October 2004 have been fully considered but they are not persuasive.

The applicant states, on page 11, paragraph 2, that Bryant et al. (hereafter Bryant) teaches identifying and selecting types of elementary streams and does so "for the benefit of providing precise broadcasting of composite programs to target audiences." Accordingly, the applicant argues that such a function would be entirely defeated by accommodation of user preferences as in Maissel et al. (hereafter Maissel) and indeed no teaching of any user control or collection of user preference data based on user selection of program types is seen. The examiner disagrees, Bryant is introduced to teach deficiencies of Maissel, Maissel teaches utilizing preference information for selecting programming or any other kind of customization (see col. 13, lines 35-41, col. 14, lines 10-16 and col. 14, line 19), along with the collection of user preference data based on user selection of program types seen (col. 12, lines 23-30).

The applicant elaborates that while selection is performed in the set top box to allow targeting of individual broadcast/cable system operator to allow targeting of individual material (Bryant: col. 5, ll. 34-39), therefore the applicant argues that Bryant teaches nothing other than system operator control of the exclusion of the user or collected user preference/selection information. The examiner disagrees; the examiner notes that the user preferences of Bryant can be collected and stored at the set top box

(col. 4, ll. 33-36). Further, there is nothing in Bryant that suggests that the user cannot further identify information of the programming.

Bryant teaches a system that enables networks to further customize information to the users such as local regions (col. 3, ll. 26-37), which is independent of the selection process. Regardless, the base reference already (Maissel) teaches user preference and selection information, and the secondary reference, Bryant does not teach away from the selected material.

Bryant is introduced to teach the selection process, the examiner notes that the selection process is performed at the client machine in that the user receives the plural streams of data (col. 6-7, ll. 57-17).

The applicant further argues that, "Bryant et al. may teach selection between elemental streams of fill material, it does not teach doing so in response to collected user selection data forming a user profile or in connection with types of programs in respective elemental streams. The examiner recognizes that this may be true, however, the examiner relies on Maissel to teach the limitations of forming user profiles (col. 12, lines 16-22 and col. 13, lines 35-41) in connection with types of programs (col. 12, lines 16-43). For the reasons set forth, the examiner disagrees.

### ***Drawings***

2. The drawings were received on 13 October 2004. These drawings are acceptable.

***Claim Objections***

3. Claim 10 is objected to because of the following informalities:

Claim 10, in line 5, recites, "elementstreams," which appears to a typographical error. Accordingly, "elementstreams" will be treated as "elementary stream" for the rest of this action.

Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-10** are rejected under 35 U.S.C. 103(a) as being unpatentable over Maissel et al. (Maissel), U.S. Patent No. 6,637,029 in view of Bryant et al. (Bryant), U.S. Patent No. 6,652,615.

Regarding **claim 1**, Maissel discloses a program selection device (Fig. 2; Receiving unit **120**) which receives a plurality of programs (col. 10, lines 54-62) and an EPG (Electronic Program Guide) (program schedule information; col. 11, lines 7-35; see Figs. **9A-9L**), comprising

a controller (Agent **130**; col. 12, lines 16-22 [determination of characteristics] and col. 13, lines 35-41 [customization according to profile]); and

a storage section (memory of profile storage **140** and agent **130**; col. 10, lines 42-46), and

wherein said storage section stores a past record of the user viewing programs in association with a plurality of predetermined types of the programs (col. 12, lines 23-30), and the received EPG (col. 11, lines 48-51; see col. 10, lines 42-46), and

said controller identifies types of the selected program in accordance with the EPG (characterizing television program currently being viewed, col. 12, lines 16-34), calculates rates at which the user views programs in association with each of the types based on the past record (col. 12, lines 35-43 [viewer profile including determination of preference strength for program type]), and specifies a type of program based on the calculated rates (col. 17, line 65 – col. 18, lines 28 [customization according to viewer profile]).

Although Maissel suggests utilizing preference information for selecting programming or any other kind of customization (see col. 13, lines 35-41, col. 14, lines 10-16 and col. 14, line 19), Maissel fails to specifically disclose the controller identifying types of multiplexed elementary streams and selecting an elementary stream corresponding to the specified type, as claimed.

However, Bryant, in an analogous art, teaches identifying types of multiplexed elementary streams and selecting an elementary stream corresponding to a specified type, of a plurality of elementary streams which are received together with a selected program (Fig. 6; col. 6, line 57 – col. 7, line 17)

for the benefit of providing precise broadcasting of composite programs to target audiences (see col. 4, lines 10-14).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the controller of Maissel to incorporate identifying types of multiplexed elementary streams and selecting an elementary stream corresponding to a specified type of a plurality of elementary streams which are received together with a selected program, as taught by Bryant, for the benefit of providing precise broadcasting of composite programs to target audiences in a program selection device.

Regarding **claim 2**, Maissel discloses a program selection device (Fig. 2) which receives a plurality of programs (col. 10, lines 54-62) and an EPG (program schedule information; col. 11, lines 7-35; see Figs. **9A-9L**), said device comprising:

program receiving means for receiving the program, and the selected program EPG (Fig. 2; receiving unit **120**; col. 11, lines 48-56);

type identification means for identifying types of the selected program (characterizing television program currently being viewed, col. 12, lines 16-23);

rate calculation means for calculating rates at which the user views programs in association with a plurality of program types (col. 12, lines 35-43 [viewer profile including determination of preference strength for program type]);  
and

rate storage means for storing the calculated rates in association with each of the program types (col. 12, lines 23-30); and

selection means for specifying a program type based on calculated rates (col. 17, line 65 – col. 18, lines 28 [customization according to viewer profile]).

Although Maissel suggests utilizing preference information for selecting programming or any other kind of customization (see col. 13, lines 35-41, col. 14, lines 10-16 and col. 14, line 19), Maissel fails to specifically disclose receiving and identifying a plurality of elementary streams and ES selection means, as claimed.

However, Bryant, in an analogous art, teaches receiving and identifying a plurality of elementary streams (col. 4, lines 20-36) and, further, ES selection means which selects an elementary stream of the plurality of elementary streams received together with a selected program, where the elementary stream corresponds to a specified program type (e.g., viewer profile) (Fig. 6; col. 6, line 57 – col. 7, line 17) for the benefit of providing precise broadcasting of composite programs to target audiences.

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the programs and selection means of Maissel to incorporate receiving a plurality of elementary streams, identifying types of the plurality of elementary streams, and ES selection means for selecting an elementary stream of the plurality of elementary streams received by the program receiving means, the elementary stream corresponding to the



specified program type, as taught by Bryant, for the benefit of providing precise broadcasting of composite programs to target audiences in a program selection device.

The limitation of **claim 3** is encompassed by the teachings of Maissel in view of Bryant, as discussed above relative to claim 2. Specifically, Maissel discloses the rate selection means includes a counter for counting a number of times the user views programs in association with the program types; and said rate calculation means increments, every time the user selects a program, a value of the counter corresponding each of the program types by 1, so as to obtain rates based on the counter (col. 12, lines 35-43, where recording preference strength data including the number of times programming is watched inherently discloses a counter for counting the occurrences of viewing).

The limitation of **claim 4** is encompassed by the teachings of Maissel in view of Bryant, as discussed above relative to claim 2. Specifically, Maissel discloses selection of programming and other customizations corresponding to a most-frequently watched program type based on rate calculation means is selected based on a calculation of the rate calculation means (col. 12, lines 35-43 [rate calculation]; see col. 13, lines 35-41, col. 14, lines 10-16 and col. 14, line 19 [customization based on calculation]). Bryant teaches selection of an elementary stream (col. 6, line 57 – col. 7, line 17).

As for **claim 5**, Maissel discloses a program selection method for selecting programming, after receiving a plurality of programs and an EPG (col. 13, line 35 – col. 14, line 20), the method comprising:

storing a past record of the user viewing programs in association with program types of the programs (col. 12, lines 23-30) and the received EPG (col. 11, lines 48-51; see col. 10, lines 42-46); and

identifying a program type of the selected program (characterizing television program currently being viewed, col. 12, lines 16-23), calculating rates at which the user views the programs in association with the program types based on the past record (col. 12, lines 35-43 [viewer profile including determination of preference strength for program type]), and specifying a program type of a program based on the calculated rates (col. 17, line 65 – col. 18, lines 28 [customization according to viewer profile]).

Although Maissel suggests utilizing preference information selecting programming or any other kind of customization (see col. 13, lines 35-41, col. 14, lines 10-16 and col. 14, line 19), Maissel fails to specifically disclose the program including a plurality of elementary streams and selecting one elementary stream from the plurality of elementary streams, as claimed.

However, Bryant, in an analogous art, teaches a selected program including a plurality of elementary streams and selecting one elementary stream of a plurality of elementary streams corresponding to a specified program type

(e.g., profile of user) for the benefit of providing precise broadcasting of composite programs to target audiences (see col. 4, lines 10-14).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Maissel to incorporate selected programming including a plurality of elementary streams and selecting one elementary stream corresponding to the specified program type, as taught by Bryant, for the benefit of providing precise broadcasting of composite programs to target audiences in a program selection method.

The limitations of **claims 8 and 9** are encompassed by the teachings of Maissel in view of Bryant, as discussed above relative to claim 5. Specifically, Maissel discloses selecting corresponding to a most-frequently watched program type based on a calculation performed in said calculating (col. 12, lines 35-43 [viewer profile including determination of preference strength for program type]). Bryant teaches selecting, of the plurality of elementary streams which are multiplexed and included in the program selected by the user, an elementary stream corresponding to a program type (Fig. 6; col. 6, line 57 – col. 7, line 17).

Regarding **claim 6**, Maissel discloses a program selection method for selecting programming or other customization, after receiving a plurality of programs and an EPG (col. 13, line 35 – col. 14, line 20), said method comprising:

receiving a program selected by the user (col. 10, lines 54-62) and the EPG (col. 11, lines 7-35);

identifying a program type of the selected program (characterizing television program currently being viewed, col. 12, lines 16-23);

calculating rates at which the user views the programs in association with a plurality of program types (col. 12, lines 35-43 [viewer profile including determination of preference strength for program type]);

storing the rates which are calculated in association with the plurality of program types (col. 12, lines 23-30); and

specifying a program type based on the calculated rates (col. 17, line 65 – col. 18, lines 28 [customization according to viewer profile]).

Although Maissel suggests utilizing preference profile data for selecting programming or any other kind of customization (see col. 13, lines 35-41, col. 14, lines 10-16 and col. 14, line 19), Maissel fails to specifically disclose receiving a program comprising a plurality of elementary streams, as claimed, and specifying a program type to select one elementary stream corresponding to a specified program type, as claimed.

However, Bryant, in an analogous art, teaches receiving a program comprising a plurality of elementary streams and specifying a program type (e.g., type of ad corresponding to user profile) to select one elementary stream, corresponding to the specified program type, of the plurality of elementary

streams received for the benefit of providing precise broadcasting of composite programs to target audiences (see col. 4, lines 10-14).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the programs and selection of Maissel to incorporate receiving a plurality of elementary streams and specifying a program type based on calculated rates to select one elementary stream, corresponding to the specified program type, of the plurality of elementary stream received in said receiving in a program selection method.

The limitation of **claim 7** is encompassed by the teachings of Maissel in view of Bryant, as discussed above relative to claim 6. Specifically, Maissel discloses a counter for counting a number of times the user watches program in association with the program types used in said storing, and in said calculating, every time the user selects a program, a value of the counter corresponding to each of the program types is incremented by 1, and the rates are obtained based on the value of the counter (col. 12, lines 35-43 where recording preference strength data including the number of times programming is watched inherently discloses a counter for counting the occurrences of viewing).

Regarding **claim 10**, Maissel discloses a program selection device (Fig. 2; Receiving unit **120**) which receives a plurality of programs (col. 10, lines 54-62) and an EPG (Electronic Program Guide) (program schedule information; col. 11,

lines 7-35; see Figs. **9A-9L**), which contains predetermined types of the programs which represent the contents of the programs.

a storage section (memory of profile storage **140** and agent **130**; col. 10, lines 42-46), and

wherein said storage section stores a past record of the user viewing programs in association with a plurality of predetermined types of the programs (col. 12, lines 23-30), and the received EPG (col. 11, lines 48-51; see col. 10, lines 42-46), and

said controller identifies types of the selected program in accordance with the EPG (characterizing television program currently being viewed, col. 12, lines 16-34), calculates rates at which the user views programs in association with each of the types based on the past record (col. 12, lines 35-43 [viewer profile including determination of preference strength for program type]), and specifies a type of program based on the calculated rates (col. 17, line 65 – col. 18, lines 28 [customization according to viewer profile]).

Although Maissel suggests utilizing preference information for selecting programming or any other kind of customization (see col. 13, lines 35-41, col. 14, lines 10-16 and col. 14, line 19), Maissel fails to specifically disclose the controller identifying types of multiplexed elementary streams and selecting an elementary stream corresponding to the specified type, as claimed.

However, Bryant, in an analogous art, teaches identifying types of multiplexed elementary streams and selecting an elementary stream

corresponding to a specified type, of a plurality of elementary streams which are received together with a selected program (Fig. 6; col. 6, line 57 – col. 7, line 17) for the benefit of providing precise broadcasting of composite programs to target audiences (see col. 4, lines 10-14).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the controller of Maissel to incorporate identifying types of multiplexed elementary streams and selecting an elementary stream corresponding to a specified type of a plurality of elementary streams which are received together with a selected program, as taught by Bryant, for the benefit of providing precise broadcasting of composite programs to target audiences in a program selection device.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Y Koenig whose telephone number is (703) 306-0399. The examiner can normally be reached on M-Th (7:30 - 6:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Grant can be reached on (703) 305-4755. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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